



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF KRYSZKIEWICZ v. POLAND

(Application no. 77420/01)

JUDGMENT

STRASBOURG

6 March 2007

FINAL

06/06/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kryszkiewicz v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 February 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 77420/01) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Ryszard Kryszkiewicz (“the applicant”), on 1 August 2000.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 29 November 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in Warsaw, Poland.

5. In 1975 a plot of land located in Warsaw, owned by the applicant's mother, was expropriated for the purpose of building an apartment block. However, the buildings were constructed only on a part of the plot and the rest remained unused.

6. On 5 July 1992 the applicant's father and his brother lodged an application for restitution of the expropriated land with the Warsaw District

Office (*Urząd Rejonowy*) under section 69 of the Law of 29 April 1985 on the Land Administration and Expropriation (*Ustawa o gospodarce gruntami i wywłaszczaniu nieruchomości*). This section stipulated that the former owner (or his legal successor) of the expropriated property could lodge an application for restitution provided that the property no longer served a purpose specified in the expropriation decision. Subsequently, the applicant lodged another application for restitution of the property.

7. The applicant's mother died and on 23 May 1994 the Warsaw District Court declared the applicant and his brother to be her only heirs.

8. The authorities failed to take any steps until 1994 when they requested information from several other institutions as to the legal situation of the property. It appears that the applicant repeatedly requested information about the course of the proceedings.

9. In 1995 the Warsaw-Bemowo Municipal Office (*Urząd Gminy*) informed the applicant that the 1975 decision on expropriation was still in force and was final.

10. On 25 January 1996 the Head of the Warsaw District Office (*Kierownik Urzędu Rejonowego*) stayed the proceedings and informed the applicant that he could institute another set of proceedings concerning the division of the property in question.

11. Subsequently, the applicant instituted such proceedings in which he sought to divide the expropriated property. It appears that the first decision in this set of proceedings was given on 23 June 1998 dismissing the request. Finally, on 30 September 1998 the Warsaw Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) discontinued the proceedings.

12. On 9 November 1998 the applicant requested the resumption of the proceedings concerning restitution of the property.

13. On 7 October 1999 the Mayor of the Warsaw District (*Starosta Powiatu Warszawskiego*) resumed the proceedings and on the same date he discontinued them considering that the matter was *res judicata*.

14. The applicant appealed.

15. On 18 November 1999 the Warsaw Self-Government Board of Appeal allowed the appeal, quashed the decision and remitted the case.

16. Since the Mayor failed to take any decision the applicant lodged on 1 February 2001 a complaint about his inactivity with the Warsaw Self-Government Board of Appeal. The Board failed to take any action. On 30 January 2002 the applicant complained about the inactivity of both authorities to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

17. On 10 June 2002 the Mayor of the Warsaw District gave a decision in which it allowed the applicant's action and returned to him and to his brother the property in question.

18. On 18 June 2002 the Supreme Administrative Court examined the applicant's complaint about the inactivity of the administrative authorities and dismissed it, *inter alia*, in view of the Mayor's decision of 10 June 2002.

19. The Warsaw-Bemowo Mayor (*Burmistrz*) lodged an appeal against the decision of 10 June 2002 with the Mazowiecki Governor (*Wojewoda Mazowiecki*).

20. On 11 October 2002 the Mazowiecki Governor allowed the appeal, quashed the impugned decision and remitted the case to the Warsaw-Bemowo Mayor.

21. The applicant lodged a complaint against this decision, but on 19 March 2004 the Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) dismissed it. The applicant's cassation appeal was dismissed by the Supreme Administrative Court on 26 October 2005.

22. In view of the length of the proceedings before the administrative courts, on 7 June 2004, the applicant made a complaint about a breach of the right to a trial within a reasonable time under the 2004 Act. On 30 September 2005 the Supreme Administrative Court dismissed his complaint finding that the length of the proceedings before it did not exceed a reasonable time.

23. The case is pending before the Warsaw-Bemowo Mayor.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

25. The Government contested that argument.

26. The Court notes that the proceedings started on 5 July 1992 when the applicant's father and brother filed a request for restitution of the property. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question has not yet ended. It has thus lasted 13 years and 9 months.

A. Admissibility

27. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

29. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

30. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

32. The applicant did not claim any particular sum in respect of pecuniary or non-pecuniary damage. However, he submitted that he had suffered pecuniary damage as well as stress and frustration due to the protracted length of the proceedings and the impossibility to have his property returned to him.

33. The Government contested the applicant's claim in respect of pecuniary damage. With regard to non-pecuniary damage they asked the

Court to rule that the finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the Government invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and with reference to national economic conditions.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant also claimed 1,000 Polish zlotys (PLN) for the costs and expenses incurred before the domestic courts.

36. The Government contested the claim.

37. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

38. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President